

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1272 of 1998

WITH

CIVIL REVISION APPLICATION No 1273 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESHAVBHAI JAGJIVANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JT TRIVEDI for Petitioner
MR ST MEHTA, AGP for Respondent No. 1 to 3
MR PJ VYAS for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/04/99

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. S.T. Mehta,
Ld. A.G.P. for respondents nos. 1 to 3 and Mr. P.J. Vyas,
Ld. Advocate for respondent no.4.

2. Both these revision applications arise from the

impugned order dated 20/7/1998 rendered by the Ld. Joint District Judge, Surat in Misc. Civil Appeal No. 266/1994 and 86/1994. The said appeals were moved against order passed by the Ld. 4th Joint Civil Judge [S.D.] Surat, below injunction application Exh.5 in Regular Civil Suit No. 1894 of 1993. The learned trial Judge granted injunction application moved by the plaintiff (present petitioner). Accordingly the respondents were under temporary injunction till the final disposal of the suit from taking canal water or by any other source from the land bearing survey no. 233/1 (block no. 134).

3. Learned appellate Judge has made a reference to the document mark 3/5 dated 27/12/1993 in which the authority named in this document was to visit the site and decide the issue on the site itself. The learned appellate Judge has come to the conclusion that the trial Court committed error in not considering this vital document. That is how the appeals have been allowed setting aside the order below Exh.5. Both these revision applications are directed against these appellate orders.

4. In both these matters interim relief has been granted and continued till this date.

5. Having heard the learned advocates for the parties and Ld. A.G.P. for the Government, I am of the opinion that the authority as per exh. 3/5 dated 27/12/1993 must be permitted to go to the site, make note and prepare a report of his decision from such notes. He must also be permitted to submit that report to the trial Court as the trial Court will be required to take decision on merits with regard to whether there was a field channel passing through the land in question or not and if yes, whether the field channel has been covered up by the road widening or passing of the road over the field channel. This is a vital question of fact which deserves consideration at the hands of the trial Court. Following directions are, therefore, issued :-

The orders passed by both the Courts below shall stand replaced by the following order :-

The authority as referred to in Exh. 3/5 dated 27/12/1993 wil visit the site and submit the report to the trial Court as observed in this order. This shall be done within two months from today.

The trial Court will consider the report and its

effect on the rights of the parties. As soon as the report is filed, the trial Court will proceed with the suit immediately and decide the same in accordance with law after permitting evidence being adduced by the parties. As stated above, the trial Court will consider the report submitted by the aforesaid authority and the effect of such report on the rights of the parties sought to be presented before the trial Court in the suit.

The trial Court will proceed with the suit and decide the same as expeditiously as possible, preferably within a period of six months from the date of the receipt of the report from the aforesaid authority.

Till such disposal of the suit, parties will maintain status-quo with regard to the subject matter of the suit.

Rule made absolute in the aforesaid terms. No order as to cost.

* * *

PVR.